

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

OPENING COMMENTS OF THE GREENLINING INSTITUTE

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April 18, 2011

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INTRODUCTION

The Greenlining Institute (“Greenlining”) submits these Comments in response to the Notice of Proposed Rulemaking (“NPRM”) in CC Docket No 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51. Greenlining is a non-profit organization dedicated to empowering communities of color and other low-income communities. The Greenlining Institute seeks to protect consumer interests while partnering with some of the largest companies in America to better serve this country’s multi-ethnic and underserved communities. The Greenlining Coalition is perhaps the oldest and most diverse coalition of Asian/Pacific Islander, Black, and Latino community leaders and includes faith-based organizations, minority business associations, community development corporations, health advocates, traditional civil rights organizations, and minority media outlets.

Greenlining supports the Federal Communications Commission’s (“the Commission”) proposals directed towards bringing robust, affordable broadband to all Americans. As has been demonstrated many times by the Commission, most comprehensively by the National Broadband Plan, ubiquitous broadband service is a central vehicle for this nation’s economic, educational and social development. Considering broadband’s vital importance, the goals of ubiquitous broadband service should be supported by the Universal Service Fund. The National Broadband Plan and its recommendations concerning the extension of universal service to broadband cannot become just an exploratory exercise. Its recommendations concerning the use of universal service funds must be seen as a blueprint for action. Greenlining commends the Commission for proposing this important step in this NPRM.

Greenlining’s comments will focus on general policy considerations regarding the future of the Universal Service Fund as it relates to broadband. Greenlining understands that this

NPRM addressing many other related issues, including many specific changes to the intercarrier compensation (ICC) system designed to make it more efficient and to support the Commission's focus on the future of broadband. These are important technical issues on which many other participants will no doubt provide more knowledgeable comment. As a policy advocacy organization, Greenlining's comments will focus on general fundamental policy considerations for the future of universal service.

Greenlining supports the Commission in its efforts to make universal service and intercarrier compensation support more efficient and more directed towards supporting networks that can carry broadband as well as voice. We understand that one of the Commission's priorities is to limit the burden of the Universal Service Fund on American households, and this is an important consideration for the long-term future of universal service support. Nevertheless, we urge the Commission not to shy away from the task of making broadband robust and ubiquitous for all Americans. Although this is a huge undertaking, the rewards it will bring are substantial.

I. The Commission Has Sufficient Legal Authority to Support Broadband through Universal Service.

Greenlining continues to strongly urge the Commission to reclassify broadband as a telecommunications service.¹ Broadband classification as a telecommunications service would give the Commission clear and direct authority to support broadband through universal service funds. The Commission would not need to develop a legal theory – which could be challenged – to address the Communications Act's definition of universal service as an “evolving level of telecommunications service.”² Simply put, reclassification would make things much easier for

¹ See Opening and Reply Comments of the Greenlining Institute, *In the Matter of Framework for Broadband Internet Service*, GN Docket No. 10-127 (July 15, 2010, Aug. 12, 2010).

² See 47 U.S.C. 254(c)(1).

the Commission as it seeks to encourage ubiquitous broadband deployment. The Commission would not need to worry that each of its actions in advancement of broadband deployment would be challenged as outside its authority.

However, should the Commission not reclassify broadband as a telecommunication service it would still have clear authority to accomplish its proposals with respect to universal service support for broadband. Greenlining does not have a strong recommendation for which statute the Commission should rely on to advance the goals of ubiquitous broadband – we continue to advocate reclassification as the best course of action. However, in the alternative, section 254(b) of the Communications Act, which specifically directs the Commission to implement universal service, most likely provides best source of authority for Commission activity. As Greenlining recommends a broad range of activity to effectively support broadband deployment through universal service funds, the Commission should seek broad statutory authority.

A. The Commission Should Add Broadband to the List of Supported Services.

Broadband service meets all of the characteristics of services that should receive universal service support.³ Broadband has become essential to education, public health and public safety.⁴ The National Broadband Plan listed the percentage of home broadband users who engaged in various online activities related to education, public health or public safety, including: receiving local or community news (80%), visiting a government website (79%),

³ See 47 U.S.C. § 254(c)(1). The question of whether broadband should be classified as a telecommunications service or if the Commission will forbear from enforcing the telecommunications requirement of § 254(c)(1) is still unresolved.

⁴ See 47 U.S.C. § 254(c)(1)(A).

receiving advice from government about a health or safety issue (54%), and taking a class online (24%).⁵

Although there are many communities that lag behind in both broadband accessibility and adoption – which of course is the focus of the Commission’s actions in this NPRM – overall, a substantial majority of residential customers subscribe to broadband service.⁶ More than five out of eight Americans (65%) now connect to the internet with a broadband connection.⁷ Simply put, broadband service is central to the nation’s economic and social development – a fact that hardly bears repeating to this Commission, with its history of championing broadband growth and adoption. As such, support of broadband with universal service funds is consistent with the public interest, convenience and necessity.⁸

Officially recognizing broadband on the list of supported services is a step towards recognizing its central importance to the nation’s communications infrastructure. It is also a step towards the proper regulation of the broadband providers in the universal service communications networks. The Commission should take this step.

B. Universal Service Support Should Be Restricted to ETCs or Entities that Demonstrate Similar Characteristics.

If the Commission does reclassify broadband as a telecommunications service, then it should restrict universal service funds to eligible telecommunications carriers (“ETCs”). However, if reclassification does not occur, the Commission should apply requirements on broadband recipients of universal service funds that are similar to current requirements for ETCs for voice service.⁹ Greenlining is concerned with the real world impact of Commission actions.

⁵ See National Broadband Plan, p. 16, Exhibit 3-B.

⁶ See 47 U.S.C. § 254(c)(1)(B).

⁷ See National Broadband Plan at 167.

⁸ See § 254(c)(1)(D).

⁹ See NPRM, ¶ 88.

The Commission’s goals for universal service support of broadband must be carried out. Greenlining urges that in the final result, the Commission establishes robust requirements – similar to those currently applied to ETCs – for broadband recipients of universal service funds. Greenlining does not have a specific recommendation about whether the Commission should establish official ETC requirements for broadband providers or should forbear from the ETC requirement, as long as the final result meets the Commission proposals in this NPRM.

Thus, among other things, broadband providers receiving universal service support should be required to “offer and advertise supported services ‘throughout the service area for which the designation is received.’”¹⁰ The recipient would need to show a commitment and ability to provide service to all customers within its proposed service area, that the recipient will remain functional in emergency situations; and that it will satisfy consumer protection and service quality standards. Recipients of broadband universal service support should also fulfill “broadband provider of last resort” requirements applicable in each state. Universal service support should carry with it all of the ETC requirements that helped make universal service support such a success for voice service.

II. The Commission Should Establish Requirements for Adequate Service and Accountability for Broadband Recipients of Universal Service Funds.

Universal service funds should not be expended on providing substandard service or service that will soon become obsolete. The Commission should establish certain characteristics of broadband service that must be met in order to receive universal service support.

A. Universal Service Must Support Broadband Speed Adequate for Current and Future Needs.

Greenlining urges the Commission to establish the benchmark speed of four megabits per second (“mbps”) download and one mbps upload as an absolute minimum for universal service

¹⁰ See *id.*, citing 47 U.S.C. § 214(e)(1).

support. This is the minimum speed component of the national broadband availability target proposed in the National Broadband Plan.¹¹ However, this benchmark is not the speed needed for the future. The National Broadband Plan's central goal is for widespread, affordable broadband at speeds of up to 100 mbps by the year 2020. While this is certainly an ambitious goal, at the very least, universal service should not support deployment of outdated broadband service. Granted, at the rate that technology is developing in this arena, the current speed standard will never be current for very long. However, for the time being, the standard set forth in the Broadband Plan is an appropriate benchmark.

Further, if the Commission is to be truly technologically neutral, then there should not be differing standards for various technologies. Nor should certain communities be left behind. The national broadband availability target of 4 mbps/1 mbps should be a rigorous standard for universal service.

As the Commission proposes, this standard must be based on actual speed, not advertised speed. The Commission should not rely on the spotty regulatory vehicle of customer complaints to establish actual speed. Those communities that currently are unserved by broadband are exactly those communities that will be least likely to be familiar with the means of establishing their speed and will be least likely to make complaints. The Commission should require universal service recipients to test their service quarterly and report the results – subject to audit – to the Universal Service Administrative Company, as proposed in the NPRM.¹²

To ensure that the digital divide does not persist in the area of service quality, the Commission's regulation of communications must be responsive to changes in the market and in our society. The broadband marketplace is dynamic, and Commission regulation must be

¹¹ See National Broadband Plan at 135.

¹² See NPRM, ¶ 116.

flexible in order to match this dynamism. The Commission cannot remain bound to outdated views of the broadband market. For example, a decade ago perhaps 200 kilobits per second in download speed would have been sufficient to support then-advanced technologies, given that most of the traffic consisted only of text-based web-pages.¹³ However, with the advent of more advanced information services, 4 mbps of download speed and 1 mbps of upload speed is the new bare minimum requirement.¹⁴ The Commission's support of broadband as proposed in this NRPM must be responsive to these kinds of changes in the dynamics of broadband.

The annual evaluation of broadband deployment required by section 706 of the Telecommunications Act is the most logical opportunity to re-assess broadband speed. The Commission should use this opportunity to determine whether the national baseline standards for download and upload speeds need to be revised in order to keep up with the times, and along with them the standards for service supported by universal service funds

B. Support for Broadband Should also Advance the Ubiquity and Affordability of Voice Telephony.

The Commission correctly notes that broadband service can also be a vehicle to advance the deployment of voice telephony. Greenlining supports the Commission's efforts to establish an efficient universal service model, facilitating the deployment of voice telephony over broadband networks and eliminating mechanisms that encourage outdated and inefficient technologies. However, if broadband is to truly be a benefit to the universality of voice telephony, it must provide benefits to consumers. The ubiquity of voice service is less a question of accessibility – as near universal accessibility has been achieved – and more a question of

¹³ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, A National Broadband Plan for Our Future, GN Docket No. 09-51, ¶ 4 (July 20, 2010) (*Sixth Broadband Deployment Report*).

¹⁴ See *id.* at ¶ 5.

adoption. Thus, affordability of voice telephony service is the one benefit that broadband deployment may provide to the goal of universal voice telephony service.

Thus, recipients of universal service support should be required to offer voice telephony service as a standalone service. This will allow broadband deployment to still benefit the many customers who cannot afford the hardware necessary to use broadband to connect to the Internet.

C. Broadband Service Must Be Affordable to Advance Its Ubiquity.

In order to actually advance the goals of ubiquitous broadband service, customers must not only have access to broadband, they also must adopt it. Unfortunately, especially for certain communities, affordability is a barrier to adoption.

The National Broadband Plan further found that 80 million adults, roughly 35% of the population, do not use broadband at home.¹⁵ The Plan noted that some communities adopt broadband at significantly lower levels, including 1) Hispanics, half of whom do not use broadband at home; 2) African-Americans, 41% of whom do not adopt broadband; and 3) those whose annual household income is less than \$20,000, 40% of whom do not adopt broadband.¹⁶

The National Broadband Plan notes that cost is the most significant reason non-adopters cite for their failure to use broadband.¹⁷ Unfortunately, the price for broadband service continues to rise exorbitantly.¹⁸ The broadband adoption rates cited above, which are much lower for communities of color and low-income households, support the view that affordability is a barrier to adoption.

¹⁵ See National Broadband Plan at 167, n.1.

¹⁶ *Id.* at 167, Exhibit 9-A.

¹⁷ See *id.* at 168.

¹⁸ The average monthly bill for broadband service nationwide in April 2009 was \$39.00, an increase from \$34.50 in May 2008. JOHN HERRIGAN, HOME BROADBAND ADOPTION 2009, PEW INTERNET & AMERICAN LIFE PROJECT 29 (2009), available at <<http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx?r=1>>.

In order to truly advance broadband as a universal service, the Commission must require that recipients of universal service support offer broadband at affordable rates – and at rates that are reasonably uniform across rural and urban areas. The Commission should establish a dollar figure measure of affordability, based not on broadband prices – which, as demonstrated above, are rising quickly – but based rather on income levels. While Greenlining encourages the application of the low-income program towards achieving affordability, we also strongly believe that the high-cost program should be marshaled towards achieving affordability and thus, adoption.

The Commission should not rely on third party reports on broadband prices. There is no guarantee that these reports will even be performed, much less that they will meet the requirements of the Commission. Rather, the Commission should require pricing data from broadband providers. Such data can not only be collected from universal service support recipients, but can be required of all broadband providers pursuant to the Commission’s responsibility under section 706 of the Telecommunications Act to conduct the annual review of broadband deployment.

In order to advance the ubiquity of broadband service, the Commission should require that recipients of universal service support must offer broadband as a standalone service, with no obligations to purchase video, voice or other services. Recipients of broadband service should not be allowed to require a term of service or impose early termination fees (“ETFs”). Alternatively, both the term of service and the ETF should be required to accurately reflect the cost of extending service to the customer in question, or to a similarly situated average of customers.

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D. The Commission Must Establish Adequate Reporting, Certification and Enforcement.

In order to efficiently achieve its objectives of advancing broadband deployment and voice telephony over broadband, the Commission must establish the necessary reporting, certification and enforcement mechanisms to support its actions. The Commission should not shy away from its responsibilities under the Communications Act and the Telecommunications Act. Both statutes provide adequate authority for the Commission to advance broadband deployment through universal service support. Thus, whether or not broadband is classified as a telecommunication service, the Commission should establish requirements at least on par with the requirements placed on ETCs. These requirements will ensure that the broadband deployment proposed by the National Broadband Plan and by this NPRM is actually carried out and not frustrated by the lack of accountability.

Regarding such issues as affordability, the Commission should take additional action, beyond what is currently required of ETCs. The Commission should establish all the necessary mechanism to implements its proposal to advance broadband deployment. This includes all the requirements to establish accountability in the use of universal service funds.

III. The Benefits of Universal Broadband Service Outweigh the Burden of Support.

The Commission is correct in focusing on the elimination of waste and inefficiencies in the current universal service and intercarrier compensation mechanisms. Greenlining supports such stewardship and accountability. Greenlining agrees that limiting the burden of universal service on contributing households is the fourth priority for the Commission's Path to Reform.¹⁹ However, Greenlining urges the Commission to fully develop its proposal of advancing

¹⁹ See NPRM, ¶ 80.

ubiquitous broadband service. Given a streamlined, efficient infrastructure, the benefits of ubiquitous broadband greatly outweigh the burdens of supporting it.

Broadband connectivity is increasingly becoming a necessity for the economic growth of this nation. The National Broadband Plan listed the percentage of home broadband users who engaged in certain online activities, including: buying a product (83%), banking (69%) and receiving information or applying for a job (60%).²⁰ Increasingly, E-mail or video carried over broadband is replacing telephone calls as the means of conducting business.

Businesses rely on broadband for basic functions such as reaching customers and increasing productivity. For example, 97% of small businesses use e-mail and 74% have a company website.²¹ Applications using broadband connectivity may allow faster product development cycles, access to new geographic markets, and more efficient business processes and allocation of resources.²² As the National Broadband Plan states:

[Broadband-based] productivity gains benefit the entire economy. Investment in information and communications technologies accounted for almost two-thirds of all economic growth attributed to capital investment in the United States between 1995 and 2005.²³

Thus, America's economic development relies on broadband. As such, an investment in universal broadband is an investment in America's economic recovery and long-term sustainability. We cannot allow certain communities to be left behind as unproductive components of the nation, due to lack of broadband connectivity.

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²⁰ See National Broadband Plan, p. 16, Exhibit 3-B.

²¹ See National Broadband Plan at 16.

²² See *id.*

²³ *Id.*

CONCLUSION

Greenlining strongly supports the Commission as it proposes to apply universal support in advancement of broadband ubiquity. Given the role broadband plays in the economic, social and educational development of the nation, the Commission's proposed step is imperative. Greenlining urges the Commission to take whatever actions are necessary in support of its goal. The issue of broadband deployment is of such importance that Congress recognized the authority of the Commission to promote deployment in a number of statutes. The Commission has the necessary authority and it has the blueprint provided by the National Broadband Plan. The Commission should now take this important step.

Respectfully submitted,

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Dated: April 18, 2011

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